IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2123 of 1999
with
SPECIAL CIVIL APPLICATION NO.2564 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

TIRUPATI PLASTO CHEM (INDIA) PVT LTD

Versus

UNION OF INDIA

Appearance:
MR PR NANAVATI for the Petitioner
MR ASIM J PANDYA for Respondents Nos.1 & 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

Rule. Mr Asim Pandya appearing for the Union of India waives service of Rule.

2 We have taken up both the petitions for hearing as the controversy involved is identical in nature. However, for the sake of convenience we shall refer to facts in the case of Special Civil Application No.2123 of 1999 as otherwise there is no dispute about the facts being identical in nature.

3 The petitioner in Special Civil Application No.2123 of 1990 is a private limited company. Shorn of all the historical facts the only dispute that is brought before the Court today is the challenge to order dated 26.2.1999 passed by the appropriate authority under the provisions of Kar Vivad Samadhan Scheme, 1998. In exercise of the powers conferred under Section 90(1) of the Finance (No.2) Act of 1998 the designated authority passed the impugned order whereby the excise duty to the extent of Rs.68,919 was the amount determined as payable under Section 88(1) of the Act while so far as redemption fine on goods worth Rs.6,00,000 was concerned, the same was not determined as payable under the Scheme in view of the fact that the Bank Guarantee of equivalent amount had already been ordered to be appropriated vide order in original dated 27.9.1996.

4 Mr Nanavati appearing on behalf of the petitioner contended that the impugned order was incorrect to the extent of appropriation of bank guarantee of Rs.6 lakhs in lieu of the redemption fine because, according to him, the amount had not been encashed and had been furnished towards provisional release of the goods in question. That the petitioner had in fact presented an appeal and the appeal was pending when the petitioner approached for availing the benefit of the scheme and in any case, if the petitioner was to be saddled with the liability to the extent of Rs.6 lakhs as having been appropriated, the petitioner should be permitted to avail of the right of appeal, which remedy otherwise the petitioner had already availed of before approaching under the scheme. Elaborating on the contention it was submitted that de hors the scheme, if the petitioner had succeeded in appeal, he would have been entitled to claim that the said bank guarantee should not be appropriated or encashed towards such redemption fine as a consequence of the petitioner succeeding in appeal. Alternatively, Mr Nanavati also contended that he should be permitted to revive his appeal before the appellate authority.

5 As against this, Mr Asim Pandya appearing on behalf of the respondents submitted that the controversy is no longer res integra and stands resolved in favour of the department by virtue of the decision of this Court in the case of GUJARAT STEEL AND AGRICO INDUSTRIES V. UNION OF INDIA reported in 2002 (1) GLH 130.

6 Having heard both the sides, we feel that it is not possible to accept the contentions raised on behalf of the petitioners in light of definition of the term "tax arrears" given in clause (m) of Section 87 of the Scheme, with special reference to Explanation under the said clause. The decision in case of Gujarat Steel and Agrico Industries (supra) has taken the said Explanation into consideration and held that it was not possible to accept the contention that such security (therein it was a case of cash security) was of such nature as would mean that the same was amount remaining unpaid. As the said decision has taken into consideration the entire scheme of the Act with special reference to the relevant provisions dealing with the contentions raised before us in these two petitions, it is not possible for us to accept the case of the petitioner in the present two petitions. As regards alterative contention of Mr Nanavati, in view of the findings above stated, once the petitioner opted to avail the benefit of the scheme, the appeal stood withdrawn for all purposes and it is not possible to accept the alternative contention raised by Mr Nanavati. The petitions accordingly fail. Rule in both the petitions stand discharged. There shall be no order as to costs.

(D.M.Dharmadhikari, C.J.)

(D.A. Mehta, J.)
(mohd)